

Memphis and Shelby County
Office of Construction Code Enforcement

6465 MULLINS STATION MEMPHIS, TENNESSEE 38134

Certificate of Occupancy

Permit No. B0932805

THE PREMISE KNOWN AS
3571 S US HIGHWAY 61 MEMP

IS HEREBY APPROVED FOR USE AND OCCUPANCY AS
C E WARE TOWERS

AND IS GOVERNED BY THE REGULATIONS SET FORTH AND KNOWN AS THE
MEMPHIS AND SHELBY COUNTY ZONING ORDINANCE RESOLUTION AND
MEMPHIS AND SHELBY COUNTY BUILDING CODES

ZONING CP

FIRE DISTRICT 0 N

USE GROUP mult

TYPE CONSTRUCTION VI

MAXIMUM ALLOWABLE FLOOR LOAD 40

SPECIAL STIPULATIONS AND CONDITIONS

TENANT/OCCUPANT: C E WARE TOWERS

OWNER: BETH-REACL MANAGING AGENCY-BETHEL TOWERS

CONTRACTOR:

ARCHITECT: LITTLE AND ASSOC

THIS CERTIFICATE SHALL BE POSTED IN
A CONSPICUOUS LOCATION.

MEMPHIS AND SHELBY COUNTY OFFICE
OF CONSTRUCTION CODE ENFORCEMENT

6465 MULLINS STATION ROAD
MEMPHIS, TN 38134

BUILDING OFFICIAL


ISSUED BY VNORFLE 01/30/2006

C E WARE TOWERS
3571 HIGHWAY 61
MEMPHIS TN 38109



Tom Leatherwood
Shelby County Register

As evidenced by the instrument number shown below, this document
has been recorded as a permanent record in the archives of the
Office of the Shelby County Register.

| | |
|--|----------|
|  | |
| 04163690 | |
| 09/29/2004 - 02:48 PM | |
| 3 PGS : R - WARRANTY DEED | |
| DAVEJ 262515-4163690 | |
| VALUE | 66000.00 |
| MORTGAGE TAX | 0.00 |
| TRANSFER TAX | 251.60 |
| RECORDING FEE | 15.00 |
| OP FEE | 2.00 |
| REGISTER'S FEE | 1.00 |
| WALK THRU FEE | 7.50 |
| TOTAL AMOUNT | 277.10 |
| TOM LEATHERWOOD | |
| REGISTER OF DEEDS SHELBY COUNTY TENNESSEE | |

Prepared By:

REALTY TITLE

Prepared by and return to
The Lowrance Law Firm
5100 Poplar Ave. Suite 2200
Clark Tower
Memphis, TN 38137
(901) 761-1212

3565 Ridge Meadow Pkwy # 111
Memphis, TN 38115
(901) 260-5844 / (901) 260-5847 (fax)
File No. 03070262

WARRANTY DEED

FOR AND IN CONSIDERATION OF Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and legal sufficiency of all of which are hereby acknowledged,

Estate of James W. Ford, M.D.

("Grantor"),

has this day bargained and sold and by these presents does bargain, sell, transfer and convey unto

C.E. Ware Towers, Inc.

("Grantee")

the following described property being situated in County, Tennessee, to wit:

SEE ATTACHED LEGAL DESCRIPTION EXHIBIT

Said property being one and the same property conveyed to Grantor(s) herein by way of Warranty Deed of record at Instrument Number JK-3672 in the Register's Office of Shelby County, Tennessee;

TO HAVE AND TO HOLD the aforesaid real estate, together with all appurtenances and hereditaments thereunto appertaining unto Grantee, his/her/their heirs, successors and assigns in fee simple forever.

Grantor covenants that Grantor is lawfully seized and possessed of said real estate, has full power and lawful authority to sell and convey the same; that the title thereto is free, clear and unencumbered except as follows:

Subdivision Restrictions, Building Lines & Easements; Easements of record at Book 2553, Page 453; Instrument No. J3-2849

and except for the following, and all subsequent years', taxes: 2005 City of Memphis and 2005 Shelby County

and Grantor will forever warrant and defend the same against the claims of all persons whomsoever.

The words Grantor and Grantee shall include the plural where appropriate, and pronouns shall be construed according to their proper gender and number according to the context thereof.

IN WITNESS WHEREOF, Grantor has executed this instrument this 29th day of September, 2004.

Estate of James W. Ford, MD

Barbara Ford Branch Co-Executor Joyce F. Miller Co-Executor
By: Barbara Ford Branch, Co-Executor By: Joyce F. Miller, Co-Executor

NEW YORK
STATE OF ~~TENNESSEE~~
COUNTY OF ~~SHELBY~~ ROCKLAND

Before me, the undersigned Notary Public of the State and County mentioned, personally appeared Barbara Ford Branch, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged such person to be Co-Executor of the Estate of James W. Ford, M.D. the within named bargainer, and that such person as such Co-Executor, executed the foregoing instrument for the purpose therein contained, by personally signing on behalf of the Estate of James W. Ford, M.D.

Witness my hand and seal, at office, this 28 day of September, 2004.

Renee L. Halperin
Notary Public

My Commission Expires:

11/30/06

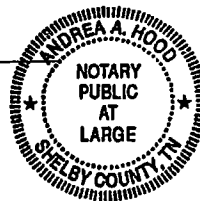
RENEE L. HALPERIN
Notary Public, State of New York
No. 4825558
Qualified in Rockland County
Commission Expires 11/30/06

STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, the undersigned Notary Public of the State and County mentioned, personally appeared Joyce F. Miller, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged such person to be Co-Executor of the Estate of James W. Ford, M.D. the within named bargainer, and that such person as such Co-Executor, executed the foregoing instrument for the purpose therein contained, by personally signing on behalf of the Estate of James W. Ford, M.D.

Witness my hand and seal, at office, this 29th day of September, 2004.

[Signature]
Notary Public



My Commission Expires:

Owner Name and Address:
C.E. Ware Towers, Inc.

My Commission Expires 11-7-2008

Property Address:
"0" Highway 61
Memphis, TN 38109

Send Tax Bills To:

C.E. Ware Towers, Inc.
3571 South Third Street
Memphis, TN 38109

Tax Parcel ID Number:
07507400075

Return To:

The Lowrance Law Firm/CST Title Escrow, Inc.
5100 Poplar Avenue, Suite 2200
Memphis, TN 38137

Valuation Affidavit:

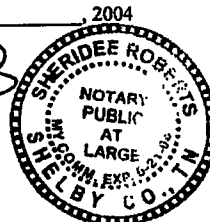
I hereby swear or affirm that to the best of my knowledge, information and belief, the actual consideration for the transfer or the value of the property transferred, whichever is greater, is \$68,000.00, which amount is equal to or greater than the amount which the property transferred would command at a fair and voluntary sale.

[Signature]
Affiant

Subscribed and sworn to before me this 29th day of Sept, 2004

[Signature]
Notary Public

My Commission Expires: _____



EXHIBIT

Being the James W. Ford Tract as described in deed recorded as Instrument HX-9213 in the Register's Office of Shelby County, Tennessee, being a part of Lot 1, Section 5, Township 1, Range 8 West in Shelby County, Tennessee, and being more particularly described as follows:

BEGINNING at a point in the west line of South Third Street (U.S. Highway 61) 976.3 Feet North of the Centerline of Fairway Avenue; thence Northwardly along the West Line of South Third Street an Arc to the left having a radius of 11,406.00 feet, a distance of 267.40 feet to a point; thence north 70 degrees 58 minutes 16 seconds west a distance of 89.98 feet to a point; thence north 87 degrees 18 minutes 10 seconds west a distance of 531.19 feet to a point; thence south 1 degree 37 minutes 33 seconds west a distance of 280.14 feet to a point; thence south 87 degrees 18 minutes 47 seconds east a distance of 530.88 feet to the point of beginning.

Key outline for David's location #35.20



Tom Leatherwood
Shelby County Register

As evidenced by the instrument number shown below, this document
has been recorded as a permanent record in the archives of the
Office of the Shelby County Register.



04163693

09/29/2004 - 02:48 PM

8 PGS : R - MISCELLANEOUS

DAVEJ 262515-0163693

| | |
|-----------------------|--------------|
| VALUE | 0.00 |
| MORTGAGE TAX | 0.00 |
| TRANSFER TAX | 0.00 |
| RECORDING FEE | 40.00 |
| DP FEE | 2.00 |
| REGISTER'S FEE | 0.00 |
| WALK THRU FEE | 20.00 |
| TOTAL AMOUNT | 62.00 |

TOM LEATHERWOOD

REGISTER OF DEEDS SHELBY COUNTY TENNESSEE

Capital Advance Program Regulatory Agreement

Housing for the Elderly or Handicapped (Nonprofit)

Section 202 of the Housing Act of 1959 or Section 811
of the National Affordable Housing Act.

U.S. Department of Housing
and Urban Development
Office of Housing
Federal Housing Commissioner

Prepared by and return to
The Lowrance Law Firm
5100 Poplar Ave. Suite 2200
Clark Tower
Memphis, TN 38137
(901) 761-1212

This agreement entered into 29 day of September XX 2004, between C. E. Ware Towers,
Incorporated whose address is 2011 Alcy Road, Memphis, TN 38114

hereinafter called Mortgagor, and the undersigned Secretary of Housing and Urban development hereinafter called HUD.

In consideration of the making of the capital advance by HUD and the disbursement of any part thereof, and in order to comply with the requirements of the Housing Act of 1959 or National Affordable Housing Act of 1990 and the Regulations adopted by the Secretary pursuant thereto, the Mortgagor agrees for itself, its successors and assigns, and any owner of the mortgaged property, that in connection with the mortgaged property and the project operated thereon and so long as the capital advance is outstanding:

1. The Note and Mortgage bear no interest and repayment is not required so long as the housing remains available for very low-income elderly persons or very low-income persons with disabilities (whichever is applicable).
2. Mortgagor will establish and maintain a special fund to be known as the revenue fund account in a bank which is a member of the Federal Deposit Insurance Corporation, Savings Association Insurance Fund, or the National Credit Union Share Insurance Fund, into which will be deposited all rentals, charges, income and revenue arising from the operation or ownership of the project. The bank in which this account is established shall provide collateral acceptable to HUD to equal the maximum amount in the account at any one time when such amount exceeds \$100,000. If the bank will not provide appropriate collateral in such instances, the Mortgagor will be required to establish accounts in two or more banks so that the total amount on deposit at any time does not exceed \$100,000 in any one bank. Expenditures shall be made from the revenue fund account only in accordance with the operating budget submitted to and approved by HUD.
3. Not later than 30 days prior to the beginning of each fiscal year, the Mortgagor shall submit an operating budget for that fiscal year to HUD. The budget shall include all necessary operating expenses, current maintenance charges, expenses of reasonable upkeep and repairs, taxes and special assessment levies, prorated amounts required for insurance and all other expenses incident to the operation of the project; and shall show the expected revenue to pay such expenses, including reserve fund deposits. The expenses incurred and disbursements shall not exceed the reasonable and necessary amount thereof, and the Mortgagor will not expend any amount or incur any obligations in excess of the amounts approved in the annual operating budget except upon written certification by the Mortgagor to HUD that such expenses were unanticipated and are necessary and provided further, that nothing in this section shall limit the amount which the Mortgagor may expend from funds ob-

tained from some other source than project revenues or other funds required of the Mortgagor pursuant to this Agreement or the Capital Advance Agreement.

4. As security for the Capital Advance for the required payments under this Agreement into the reserve fund for replacements, and for all other obligations of the Mortgagor under this Agreement, the Mortgagor hereby assigns, pledges and mortgages to HUD all its rights to the income and charges of whatever sort which it may receive or be entitled to receive from the operation of the mortgaged property, subject, however, to any assignment of rents or project income in the Mortgage referred to herein. Until a default occurs under this Agreement, however, permission is granted to Mortgagor to collect and retain under the provisions of this Agreement such rents, income, operating surplus and charges, but upon default this permission is terminated, as to all rents, income, operating surplus and charges due or collected thereafter.
5. (a) Mortgagor will establish and maintain a reserve fund for replacements in a separate account in a bank which is insured by the Federal Deposit Insurance Corporation, Savings Association Insurance Fund, or the National Credit Union Share Insurance Fund. Concurrently with the effective commencement of rental assistance payments under the Project Rental Assistance Contract, the Mortgagor will deposit an amount equal to \$ per month unless a different date or amount is approved in writing by HUD. * \$1,132.00
Such fund, whether in the form of a cash deposit or invested in obligations of, or fully guaranteed as to principal by, the United States of America shall at all times be subject to the control of HUD. Disbursements from such fund, whether for the purpose of effecting replacement of structural elements and mechanical equipment of the project for any other purpose, may be made only after the consent in writing of HUD. In the event of a default in the terms of the mortgage, HUD may demand the full or partial application of the balance in such fund to be amount due on the mortgage debt.
- (b) Mortgagor will deposit the minimum capital investment with an escrow agent acceptable to HUD pursuant to Regulations.
- (c) Within 60 days after the end of each fiscal year, any residual receipts realized from the operation of the mortgaged property shall be deposited in a separate

residual receipts account. Residual receipts shall be under the control of HUD and shall be disbursed only at the discretion of HUD for such purpose as it may determine to be necessary or appropriate.

6. The real property covered by the Mortgage and this Agreement is described in Schedule A attached hereto.
7. Mortgagor shall not without the written approval of the Secretary;
 - (a) Transfer, dispose of or encumber any of the mortgaged property. Any such transfer shall be only to a person or persons or corporation satisfactory to and approved by HUD, who shall, by legal and valid instrument in writing, to be recorded or filed in the same recording office in which conveyances of the property covered by the Mortgage are required to be filed or recorded, duly assume all obligations under this Agreement and under the Note and Mortgage;
 - (b) Assign, transfer, dispose of, or encumber any personal property, including rents or charges, and shall not disburse or pay out any funds except as provided herein and in the Capital Advance Agreement.
 - (c) Remodel, reconstruct, add to, or demolish any part of the mortgaged property or subtract from any real or personal property of the project;
 - (d) Pay any compensation or make any distribution of income or other assets to any of its officers, directors or stockholders;
 - (e) Enter into any contract or contracts for supervisory or managerial services;
 - (f) Require as a condition of occupancy or leasing of any unit or residential space in the project, any consideration or deposit other than a security deposit in an amount equal to one month's total tenant payment or \$50, whichever is greater. The family is expected to pay the security deposit from its own resources and other available public or private resources. The Mortgagor may collect this security deposit on an installment basis.

The security deposits must be placed in a segregated interest-bearing account. A record shall be maintained of the amount in this account that is attributable to each family in residence in the project. Annually for all families, and when computing the amount available for disbursement, the Mortgagor shall allocate to the family's balance, the interest accrued on the balance during the year. Unless prohibited by State or local law, the Mortgagor may deduct for the family, from the accrued interest for the year, the administrative cost of computing the allocation to the family's balance. The amount of the administrative cost adjustment shall not exceed the accrued interest allocated to the family's balance for the year. The amount of the segregated, interest-bearing account maintained by the Mortgagor must at all times equal the total amount collected from the families then in occupancy plus any accrued interest and less allowable administrative cost adjustments.

The Mortgagor must comply with any applicable State and local laws concerning interest payments on security deposits.

The Mortgagor, subject to State and local law, may use the family's security deposit balance as reimbursement for any unpaid family contribution or other amount which the family owes under the lease in accordance with the Regulations.

- (g) Permit the use of the dwelling accommodations of the project for any purpose except the use which was originally intended, or permit commercial use greater than that originally approved by HUD.
- (h) Amend its articles of incorporation or by-laws other than as permitted under the terms of the articles of incorporation approved by HUD.
8. Mortgagor shall maintain the mortgaged premises, accommodations and the grounds and equipment appurtenant thereto, in good and substantial repair and condition; provided that, in the event all or any of the buildings covered by the Mortgage shall be destroyed or damaged by fire or other casualty, the money derived from any insurance on the property shall be applied in accordance with the terms of the Mortgage.
9. Mortgagor shall not file any petition in bankruptcy or insolvency, or for a receiver, or for reorganization or composition, or make any assignment for the benefit of creditors or to a trustee for creditors; or permit an adjudication in bankruptcy, or insolvency, the taking possession of the mortgaged property or any part thereof by a receiver, or the seizure and sale of the mortgaged property or any part thereof under judicial process or pursuant to any power of sale and fail to have such adverse actions set aside within 45 days.
10. Mortgagor shall from funds other than project income immediately satisfy or release any mechanic's lien, or any other lien which attaches to the mortgaged property or any personal property used in the operation of the project, and shall dismiss or have dismissed or vacated any receivership, or petition in bankruptcy or assignment for benefit of creditors, creditors bill or insolvency proceeding involving the project or the mortgaged property.
11. (a) If the Mortgagor has or comes to have any nonproject funds, all income and other funds of the mortgaged project shall be segregated from any such funds of the Mortgagor and segregated from any funds of any other corporations or persons. Income and other funds pledged to the mortgaged project shall be expended only for the purposes of the project.
- (b) Mortgagor shall provide for the management of the project satisfactory to HUD. Any management contract entered into by the Mortgagor involving the project shall contain a provision that it shall be subject to termination, without penalty and with or without cause, upon written request by HUD addressed to the Mortgagor and the management agent. Upon receipt of such request the Mortgagor shall immediately move to terminate

the contract within a period of not more than 60 days and shall make arrangements satisfactory to HUD for continuing proper management of the project.

- (c) Neither Mortgagor nor its agents shall make any payments for services, supplies or materials unless such services are actually rendered for the project or such supplies or materials are delivered to the project and are reasonably necessary for its operation. Payments for such services or materials shall not exceed the amount ordinarily paid for such services, supplies or materials in the area where the services are rendered or the supplies or materials furnished.
 - (d) The mortgaged property, equipment, buildings, plans, offices, devices, books, apparatus, contracts, records, documents, and all other papers relating thereto shall at all times be maintained in reasonable condition for proper audit and subject to examination and inspection at any reasonable time by HUD and its duly authorized agents. Mortgagor and its successors, assigns or its agents shall retain copies of all written contracts or other instruments which affect the mortgaged property, all or any of which may be subject to inspection and examination by HUD or its duly authorized agents.
 - (e) The books and accounts of the operations of the mortgaged property and of the project shall be kept in accordance with the requirements of HUD.
 - (f) Within 60 days following the end of each fiscal year HUD shall be furnished with a complete annual financial report based upon an examination of the books and records of Mortgagor prepared in accordance with the requirements of HUD, certified to be an officer of the Mortgagor and, when required by HUD, prepared and certified by a Certified Public Accountant, or other person accepted to HUD.
 - (g) At the request of HUD, its agents, employees, or attorneys, the Mortgagor shall give specific answers to questions upon which information is desired from time to time relative to the income, assets, liabilities, contracts, operation, and condition of the property and the status of the Mortgage and any other information with respect to the Mortgagor or the mortgaged property and of the project which may be requested.
 - (h) All receipts of the project shall be deposited in the name of the project in a bank, whose deposits are insured by the FDIC, Savings Association Insurance Fund, or the National Credit Union Share Insurance Fund. Such funds shall be withdrawn only in accordance with the provisions of this Agreement for expenses of the project. Any person receiving funds of the project shall immediately deposit such funds in the project bank account and failing so to do in violation of this Agreement shall hold such funds in trust. Any person receiving property of the project in violation of this Agreement shall immediately deliver such property to the project and failing so to do shall hold such property in trust.
 - (i) Mortgagor shall at all times, if required by the laws of the jurisdiction, maintain in full force and effect a license to operate the project from the State and/or other licensing authority. Mortgagor shall lease any portion of the project only on terms approved by HUD.
 - (j) Mortgagor shall not collect from tenants or occupants or prospective tenants or occupants of the project any admission fee, founder's fee, life-care fee, or similar payment pursuant to any agreement, oral or written, whereby the Mortgagor agrees to furnish accommodations or services in the project to persons making such payments.
 - (k) No officer, director, trustee, member, stockholder nor authorized representative of the Mortgagor except for management by sponsor or non-profit affiliate, shall have any financial interest in any contractual arrangement entered into by the Mortgagor in connection with rendition of services, the provision of goods or supplies, management of the project, procurement of the site or other matters whatsoever.
12. (a) If project is funded under Section 202 of the Housing Act of 1959, as amended, Mortgagor will limit public occupancy of the project to elderly families and individuals as defined in Section 202 of the Housing Act of 1959, and applicable HUD Regulations. If project is funded under Section 811 of the National Affordable Housing Act of 1990, Mortgagor will limit public occupancy of the project to persons with disabilities as defined in Section 811 of the National Affordable Housing Act of 1990, and applicable HUD Regulations. The criteria governing eligibility of tenants for admission to Section 202 or Section 811 units and the conditions of continued occupancy shall be in accordance with the Project Rental Assistance Contract.
- (b) Except as provided in (d) below Mortgagor will make its dwelling accommodations and services available to eligible occupants at charges established in accordance with a schedule to be approved in writing by HUD. Such accommodations shall not be rented for a period less than 30 days. Commercial facilities, if any, shall be rented only in accordance with a schedule of charges fixed by the Mortgagor and approved in writing by HUD. Subleasing of dwelling accommodations or commercial facilities shall be permitted only upon the terms and conditions approved by HUD in writing.
 - (c) Upon prior written approval by the Secretary, Mortgagor may charge to and receive from any tenant such amounts as from time to time may be mutually agreed upon between the tenant and the Mortgagor for any facilities and/or services which may be furnished by the Mortgagor or others to such tenant upon request, in addition to the facilities and services included in the approved Project Rental Assistance Contract.
 - (d) Nothing contained in this Agreement shall be construed to relieve the Mortgagor of any obligations under the Project Rental Assistance Contract.

13. Mortgagor will comply with the provisions of any Federal, State or local law prohibiting discrimination in housing on the grounds of race, color, creed, age, sex, handicap, familial status or national origin, including Title VI of the Civil Rights Act of 1964 (42U.S.C.2000d-1), the Fair Housing Act (42U.S.C.3601), Section 504 of the Rehabilitation Act of 1973(29U.S.C.794), Age Discrimination Act of 1975(42U.S.C.6101) Executive Orders 11063 and 11246, Section 3 of the Housing and Urban Development Act of 1968, and the affirmative fair housing marketing requirements at 24CFR part 200, subpart M.
14. No litigation seeking the recovery of a sum in excess of \$5,000 nor any action for specific performance or other equitable relief shall be instituted nor shall any claim for a sum in excess of \$5,000 be settled or compromised by the Mortgagor unless prior written consent thereto has been obtained from HUD. Such consent may be subject to such terms and conditions as HUD may prescribe.
15. Upon a violation of any of the above provisions of this Agreement by Mortgagor, HUD may give written notice, thereof, to Mortgagor, by registered or certified mail, addressed to the address stated in this Agreement, or such other address as may subsequently, upon appropriate written notice thereof to HUD, be designated by the Mortgagor as its legal business address. If such violation is not corrected to the satisfaction of HUD within 30 days after the date such notice is mailed or within such further time as HUD determines is necessary to correct the violation, without further notice HUD may declare a Default under this Agreement effective on the date of such declaration of default and such default HUD may:
 - (a) Take possession of the project, bring any action necessary to enforce any rights of the Mortgagor growing out of the project operation, and operate the project in accordance with the terms of this Agreement until such time as HUD in its discretion determines that the Mortgagor is again in a position to operate the project in accordance with the terms of this Agreement and in compliance with the requirements of the Note and Mortgage, or require Power of Attorney from Mortgagor to effectuate transfer of the project to a HUD approved nonprofit corporation.
 - (b) Collect all rents and charges in connection with the operation of the project and use such collections to pay the Mortgagor's obligations under this Agreement and under the Note and Mortgage, and the necessary expenses of preserving the property and operating the project.
 - (c) Declare the whole of said indebtedness immediately due and payable and then proceed with the foreclosure of the mortgage.
 - (d) Apply to any court, State or Federal, for specific performance of this Agreement, for an injunction against any violation of this Agreement, for the appointment of a receiver to take over and operate the property in accordance with the terms of this Agreement, or for such other relief as may be appropriate, since the injury to HUD arising from a default under any of the terms of this Agreement would be irreparable and the amount of damage would be difficult to ascertain.
- (e) Require the Mortgagor to transfer all of its right title and interest in the project and to all project assets to a private nonprofit corporation designated by HUD and, for this purpose the Mortgagor hereby constitutes and appoints HUD its true and lawful attorney-in-fact, with full power of substitution in the premises, to transfer the project and all project assets to the private nonprofit corporation designated by HUD, if the Mortgagor fails or refuses to make such a transfer as required by HUD.
16. (a) Mortgagor has executed the Project Rental Assistance Contract. The terms of the Project Rental Assistance Contract, when executed, shall be incorporated by reference into this Regulatory Agreement.
- (b) A violation of the Project Rental Assistance Contract may be construed to constitute a default hereunder in the sole discretion of HUD.
- (c) In the event said Project Rental Assistance Contract expires or terminates before the expiration or termination of this Agreement, the provisions of this paragraph and any other reference to said Contract, and to assisted units contained herein shall be self-cancelling and shall no longer be effective as of the date of the expiration or termination of the Project Rental Assistance Contract.
17. As used in this Agreement the term:
 - (a) "Default" means a default declared by HUD when a violation of this Agreement is not corrected to its satisfaction within the time allowed by this Agreement or such further time as may be allowed by HUD after written notice;
 - (b) "Distribution" means any withdrawal or taking of cash or other assets of the project other than for payment of reasonable expenses incident to its construction, operation and maintenance;
 - (c) "Mortgage" includes "Deed of Trust", "Chattel Mortgage" Declaration of Covenants" and any other security for the Note identified herein;
 - (d) "Mortgaged Property" includes property, real, personal, or mixed, covered by the mortgage or mortgages securing the note held by HUD;
 - (e) "Mortgagee" refers to the holder of the mortgage identified herein, its successors and assigns;
 - (f) "Project" includes the mortgaged property and all its other assets or whatsoever situate, used in or owned by the business conducted on said mortgaged property;
 - (g) "Residual Receipts" means any cash remaining after;
 - (l) The Payment of;
 - (i) All amounts required to be deposited in the reserve fund for replacements;

- (ii) All obligations of the project other than the mortgage held by HUD unless funds for payment are set aside or deferment of payment has been approved by HUD; and
- (2) The segregation of;
- (i) An amount equal to the aggregate of all special funds required to be maintained by the project;
- (ii) All tenant security deposits held.
- (h) "Assisted Units" refer to units assisted pursuant to Project Rental Assistance Contract.
- (i) "Assistance Contract" refers to a Project Rental Assistance Contract between the Mortgagor and HUD under Section 202 of the Housing Act of 1959 or between the Mortgagor and HUD under Section 811(d)(2) of the National Affordable Housing Act of 1990.
18. HUD shall not be liable for any of its actions hereunder except for arbitrary and capricious conduct.
19. This instrument shall bind, and the benefits shall inure to, the respective parties hereto, their legal representatives, executors, administrators, successors in office or interest, and assigns, and all owners of the mortgaged property, so long as the Mortgage is outstanding.
20. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.
21. Mortgagor warrants that it has not, and will not, execute any other agreement with provisions contradictory of, or in opposition to, the provisions hereto, and that, in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations set forth and supersede any other requirements in conflict therewith.
22. Mortgagor does not assume personal liability for payments due under the Note and mortgage or for payments to the reserve for replacement fund. However, defaults or other failures to follow program requirements may result in limited denial of participation or debarment from HUD or other Federal programs.
23. Mortgagor shall have available necessary equipment or devices and make reasonable accommodations to meet the needs of persons with visual and/or hearing impairments in compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and 24 CFR Part 8.

United States of America
Secretary of Housing and Urban Development (Signature)

By (Name)

MILFRED J. TAYLOR
SUPERVISORY PROJECT MANAGER

Official Title

Date

7/2/04

Owner (Signature)

By (Name)

C.E. Ware Towers, Incorporated

Official Title

Date

7/2/04

SCHEDULE "A"

Being the James W. Ford Tract as described in deed recorded as Instrument HX-9213 in the Register's Office of Shelby County, Tennessee, being a part of Lot 1, Section 5, Township 1, Range 8 West in Shelby County, Tennessee, and being more particularly described as follows:

BEGINNING at a point in the west line of South Third Street (U.S. Highway 61) 976.3 Feet North of the Centerline of Fairway Avenue; thence Northwardly along the West Line of South Third Street an Arc to the left having a radius of 11,406.00 feet, a distance of 267.40 feet to a point; thence north 70 degrees 58 minutes 16 seconds west a distance of 89.98 feet to a point; thence north 87 degrees 18 minutes 10 seconds west a distance of 531.19 feet to a point; thence south 1 degree 37 minutes 33 seconds west a distance of 280.14 feet to a point; thence south 87 degrees 18 minutes 47 seconds east a distance of 530.88 feet to the point of beginning.

The area of the above-described property is 160,882 square feet or 3.693 acres.

STATE OF TENNESSEE
COUNTY OF DAVIDSON

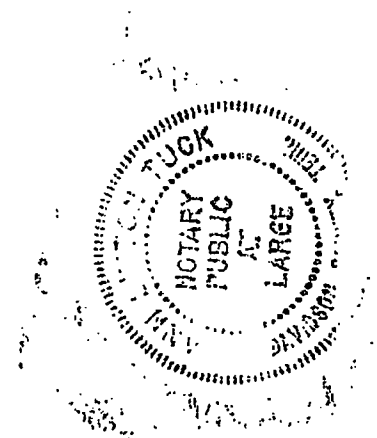
Before me, the undersigned, a Notary Public of the State and County aforesaid, personally appeared Melvin J. Saylor, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the authorized agent and person duly appointed and authorized to execute the foregoing instrument by virtue of the authority vested in him/her as Authorized Agent of the United States Department of Housing and Urban Development, Nashville Tennessee Office, a Federal Agency and the within named bargainor, and that he as such authorized agent executed the foregoing instrument as his free and voluntary act and deed and for the purpose therein contained, by signing the name of the Federal Agency by himself as authorized agent.

WITNESS my hand and seal, at office in Nashville, Tennessee, this the 23 day of September 2004.

Tom Leatherwood
Notary Public

My Commission Expires:

11-27-04

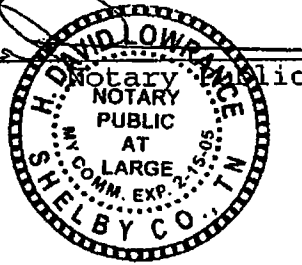


STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, the undersigned Notary Public within and for said County and State, duly commissioned and qualified, personally appeared C.E. Ware with whom I am personally acquainted and who, upon oath, acknowledged himself to be the President of C.E. WARE TOWERS, INC. the within named bargainor, a corporation, and that he as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as such President.

WITNESS my hand and Notarial Seal at office this 28th day of September, 2004.

My Commission Expires:





Tom Leatherwood
Shelby County Register

As evidenced by the instrument number shown below, this document
has been recorded as a permanent record in the archives of the
Office of the Shelby County Register.

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| | |
| 04163692 | |
| 09/29/2004 - 02:48 PM | |
| 6 PGS : R - MISCELLANEOUS | |
| DAVEJ 262515-4163692 | |
| VALUE | 0.00 |
| MORTGAGE TAX | 0.00 |
| TRANSFER TAX | 0.00 |
| RECORDING FEE | 30.00 |
| DP FEE | 2.00 |
| REGISTER'S FEE | 0.00 |
| WALK THRU FEE | 15.00 |
| TOTAL AMOUNT | 47.00 |
| TOM LEATHERWOOD | |
| REGISTER OF DEEDS SHELBY COUNTY TENNESSEE | |

Capital Advance Program Use Agreement

For Section 202 of the Housing Act of 1959 or
Section 811 of the National Affordable Housing Act

U.S. Department of Housing
and Urban Development
Office of Housing
Federal Housing Commissioner

OMB Approval No. 2502-0470 (exp. 01/31/2006)

Prepared by and return to
The Lowrance Law Firm
5100 Poplar Ave. Suite 2200
Clark Tower

Memphis, TN 38137

(901) 784-1212

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Paperwork Reduction Project (2502-0470), Office of Information Technology, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

Do not send this form to the above address.

This information collection is necessary to ensure that viable projects are developed. It is important to obtain information from applicants to assist HUD in determining if nonprofit organizations initially funded continue to have the financial and administrative capacity needed to develop a project and that the project design meets the needs of the residents. The Department will use this information to determine if the projects meet statutory requirements, ensuring the continued marketability of the projects. This information is required in order to obtain benefits. This information is considered non-sensitive and no assurance of confidentiality is provided.

This Agreement made the 29 day of September, 20 04, by and between the United States of America, Secretary of Housing and Urban Development (hereinafter called "HUD") and C. E. Ware Towers, Incorporated, a private nonprofit corporation, organized and existing under and by virtue of the laws of the State of Tennessee (hereinafter called the "Owner"), provides as follows:

Whereas, the Owner and HUD have entered into a Capital Advance Agreement to assist in financing a rental housing project to house elderly persons or persons with disabilities, (hereinafter called "persons"), in accordance with Section 202 of the Housing Act of 1959 or Section 811 of the National Affordable Housing Act, and the applicable regulations;

Whereas, HUD through the Capital Advance Agreement has provided funding for the Project identified as project number 081-EE037, financed with a Note and Mortgage (Deed of Trust), dated 09/29/2004 and covering real property as described in Exhibit "A" attached hereto, which Mortgage was recorded in the Recorder's Office of Shelby County on 09/29/2004, as Instrument , Book , Page ;

Whereas, The Project is subject to a Regulatory Agreement, dated 09/29/2004 and recorded on 09/29/2004 in the Recorder's Office of Shelby County as document number , Book , Page ;

Whereas, pursuant to section 202 of the Housing Act of 1959 (elderly projects) or section 811 of the National Affordable Housing Act (disabled projects) and the corresponding regulations, in exchange for HUD's agreement to provide capital advance financing and project rental assistance payments, the Owner has agreed to continue to operate the Project only as rental housing for very-low income elderly or disabled persons for not less than 40 years from September 1, 2005, unless otherwise approved by HUD;

Now Therefore, in consideration of the mutual promises set forth herein and of other valuable consideration, the parties hereby agree as follows:

- Definitions.** All terms used in this Agreement have the same meaning as set forth in the definitions in 24 CFR Part 889 or 890.
- Term.** This Agreement shall remain in effect for not less than 40 years from September 1, 2005, unless otherwise approved by HUD.
- Use Restriction.** The Project shall be used solely as rental housing for very-low income elderly or disabled persons.
- Transfer.** HUD has been granted and is possessed of an interest in the above described Project such that the Owner shall remain seized of the title to said property and refrain from transferring, conveying, assigning, leasing, mortgaging, pledging, or otherwise encumbering or permitting or suffering any transfer, conveyance, assignment, lease, mortgage, pledge or other encumbrance of said property or any part thereof without the release of said covenants by HUD. The Owner has constituted HUD as its attorney-in-fact to transfer the project to another private nonprofit corporation in the event of default under the Capital Advance Agreement or the Regulatory Agreement. The Owner may transfer the Project during the term of this Agreement only with the prior written approval of HUD, and any such grantee shall assume the obligations under this Agreement as a condition of any transfer. In any event, this Agreement shall be binding upon the Owner's successors and assigns.
- Release.** The endorsement by a duly authorized officer of HUD (1) upon any conveyance or transfer made by the Owner of any real or personal property which is determined to be excess to the needs of the Project, or (2) upon any instrument of conveyance or dedication of property, or any interest therein, for use as streets, alleys, or other public rights-of-way, or for the establishment, operation and maintenance of public utilities, or (3) upon any instrument transferring or conveying an interest therein, or (4) upon any instrument of release made by the Owner of the Project shall be effective to release such property from the restrictive covenants hereby created.
- Enforcement.** In the event of a breach or threatened breach of any of the provisions of this Agreement, any eligible tenant or applicant for occupancy, or the Secretary or his or her successors or delegates, may institute proper legal action to enforce performance of such provisions, to enjoin any acts in violation of such provisions, to recover whatever damages can be proven, and/or to obtain whatever other relief may be appropriate.
- Severability.** The invalidity, in whole or in part, of any of the provisions set forth above shall not affect or invalidate any remaining provisions.

In Witness Whereof, HUD and the Owner by its officers thereunto duly authorized has caused these presents to be signed in its name and its corporate seal to be hereunto affixed and attested this 29 day of September, 2004.

(Seal)

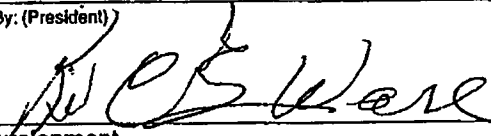
Attest:

Name of Owner:

C. E. Ware Towers, Incorporated

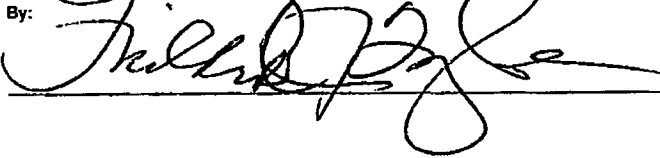
Secretary:

By: (President)



United States of America, Secretary of Housing and Urban Development

By:



Title:

Supervisory Project Manager

State or _____)

County of _____)

ss:

Before me, _____, a Notary Public in and for said State,
 on this _____ day of _____, 20____,
 personally appeared _____,
 who is personally well known to me to be the _____, of HUD, and the person who
 executed the foregoing instrument by virtue of the authority vested in him by section 202 of the Housing Act of 1959 or section 811 of
 the National Affordable Housing Act, and I having first made known to him the contents thereof, he did acknowledge the signing thereof
 to be a free and voluntary act and done on behalf of the Secretary of Housing and Urban Development for the uses, purposes and
 considerations therein set forth.

Witness my hand and official seal this _____ day of _____, 20____.
 (Seal)

(Notary Public)

My commission expires _____, 20____.

State or _____)

County of _____)

ss:

On this _____ day of _____, 20____, before me residing therein, duly commissioned and
 sworn, personally appeared _____, a Notary Public in and for said county and State,
 proved to me on the basis of satisfactory evidence to be the Secretary of _____, that
 executed the within instrument and acknowledged to me that such _____ executed the
 same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.
 (Seal)

(Notary Public)

My commission expires _____, 20____.

State or _____)

County of _____)

ss:

On this _____ day of _____, 20____, before me residing therein, duly commis-
 sioned and sworn, personally appeared _____, a Notary Public in and for said county and State,
 proved to me on the basis of satisfactory evidence to be the President of _____,
 that executed the within instrument and acknowledged to me that such _____ executed the
 same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.
 (Seal)

(Notary Public)

My commission expires _____, 20____.

STATE OF TENNESSEE
COUNTY OF DAVIDSON

Before me, the undersigned, a Notary Public of the State and County aforesaid, personally appeared Melba J. Taylor, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the authorized agent and person duly appointed and authorized to execute the foregoing instrument by virtue of the authority vested in him/her as Authorized Agent of the United States Department of Housing and Urban Development, Nashville Tennessee Office, a Federal Agency and the within named bargainor, and that he as such authorized agent executed the foregoing instrument as his free and voluntary act and deed and for the purpose therein contained, by signing the name of the Federal Agency by himself as authorized agent.

WITNESS my hand and seal, at office in Nashville, Tennessee, this the 23 day of September, 2004.

Tom Leatherwood
Notary Public

My Commission Expires:

11-27-04

STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, the undersigned Notary Public within and for said County and State, duly commissioned and qualified, personally appeared C E Ware with whom I am personally acquainted and who, upon oath, acknowledged himself to be the President of C.E. WARE TOWERS, INC. the within named bargainor, a corporation, and that he as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as such President.

WITNESS my hand and Notarial Seal at office this 28th day of September, 2004.

[Signature] Notary Public

My Commission Expires:

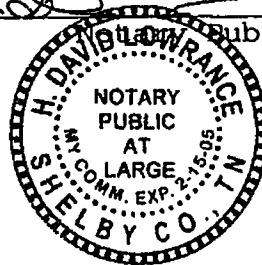


EXHIBIT A

Being the James W. Ford Tract as described in deed recorded as Instrument HX-9213 in the Register's Office of Shelby County, Tennessee, being a part of Lot 1, Section 5, Township 1, Range 8 West in Shelby County, Tennessee, and being more particularly described as follows:

BEGINNING at a point in the west line of South Third Street (U.S. Highway 61) 976.3 Feet North of the Centerline of Fairway Avenue; thence Northwardly along the West Line of South Third Street an Arc to the left having a radius of 11,406.00 feet, a distance of 267.40 feet to a point; thence north 70 degrees 58 minutes 16 seconds west a distance of 89.98 feet to a point; thence north 87 degrees 18 minutes 10 seconds west a distance of 531.19 feet to a point; thence south 1 degree 37 minutes 33 seconds west a distance of 280.14 feet to a point; thence south 87 degrees 18 minutes 47 seconds east a distance of 530.88 feet to the point of beginning.

The area of the above-described property is 160,882 square feet or 3.693 acres.



Tom Leatherwood
Shelby County Register

As evidenced by the instrument number shown below, this document
has been recorded as a permanent record in the archives of the
Office of the Shelby County Register.

| | |
|---|-------|
| | |
| 04163691 | |
| 09/29/2006 - 02:48 PM | |
| 10 PGS : R - MORTGAGE | |
| DAVEJ 262515-4163691 | |
| VALUE | 0.00 |
| MORTGAGE TAX | 0.00 |
| TRANSFER TAX | 0.00 |
| RECORDING FEE | 50.00 |
| DP FEE | 2.00 |
| REGISTER'S FEE | 0.00 |
| WALK THRU FEE | 25.00 |
| TOTAL AMOUNT | 77.00 |
| TOM LEATHERWOOD | |
| REGISTER OF DEEDS SHELBY COUNTY TENNESSEE | |

Prepared By & Return To:
The Lowrance Law firm
5100 Poplar, Suite 2200
Clark Tower
Memphis, TN 38137
(901) 761 1212

DEED OF TRUST
(Under Section 202 of the Housing Act of 1959)

THIS INDENTURE, Made and entered into this 29th day of September , 2004, by and between CE Ware Towers, Incorporated, a non-profit corporation organized and existing under the laws of the State of Tennessee, having its principal office and post-office address at 2011 Alcy, Memphis, TN 38114 hereinafter called the party of the first part, and Thomas Kelly Derryberry, Trustee(s), hereinafter called the party of the second part, and the United States of America acting by and through the Secretary of Housing and Urban Development, hereinafter called the party of the third part;

WHITNESSETH, That the party of the first part, in consideration of the debt and trust hereinafter mentioned and created, and the sum of One Dollar (\$1.00) to it in hand paid, the receipt of which is hereby acknowledged, does by these presents, bargain, sell, transfer, convey and confirm unto the party of the second part, his successors in trust, assigns, forever, the following-described land situated in County of Shelby, State of Tennessee, to wit:

See Exhibit "A" attached hereto and made a part hereof.

Maximum principal indebtedness for Tennessee recording tax purposes is \$ 0.00 Dollars. TAX EXEMPT PURSUANT TO TCA 67-4-409

TOGETHER with the privileges and appurtenances to the same belonging, and all of the rents, issues, and profits, including all rights to receive payments and payments made pursuant to a Housing Assistance Payments Contract which may arise or be had therefrom; and

TOGETHER with all buildings and improvements of every kind and description now or hereafter erected or placed thereon, and all fixtures, including but not limited to all gas and electric fixtures, engine and machinery, radiators, heaters, furnaces, heating, air-conditioning and laundry equipment, steam and hot water boilers, stoves, ranges, elevators and motors, bathtubs, sink, water closets, basins, pipes, faucets and other plumbing and heating fixtures, mantels, refrigerating plant and refrigerators, whether mechanical or otherwise, cooking apparatus and appurtenances, furniture, shades, awnings, screens, blinds and other furnishings, and;

TOGETHER with all building materials and equipment now or hereafter delivered to said premises and intended to be installed therein; and all articles of personal property owned by the party of the first part and now or hereafter attached to or used in and about the building or buildings now erected or hereafter to be erected on the lands herein described which are necessary to the complete and comfortable use and occupancy of such building or buildings for the purposes for which they were or are to be erected, including all goods and chattels and personal property as are ever used or furnished in operating a building or the activities

conducted therein, similar to the one herein described and referred to, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are, or shall be attached to said building or buildings in any manner. It is hereby agreed that to the extent permitted by law of all the foregoing property and fixtures are to be deemed and held to be a part of an affixed to the realty.

TO HAVE AND TO HOLD the same to the property of the second part, his successors in trust, and assigns, forever.

AND the party of the first part covenants with the party of the second part, his successors in trust, and assigns, that it is lawfully seized in fee of said premises, that the same are free and clear of all taxes, liens, and encumbrances whatsoever; that it had good right, full power and lawful authority to convey the same, and that it will warrant and forever defend the title thereto against the lawful claims of any and all persons whomsoever.

The conveyance is made in trust to secure payment of a just indebtedness of party of the first part to party of the third part in the principal sum of Three Million Five Hundred Twenty Three Thousand Seven Hundred Dollars (\$3,523,700.00), evidenced by its note of even date herewith, bearing interest from date on outstanding balances at FIVE and Three Eights (5.375%) percent per annum, said principal and interest being payable in monthly installments as provided in said note with a final maturity of October 1, 2045, which note is identified as being secured hereby by a certificate thereon. Said note and all of its terms are incorporated herein by reference and this conveyance shall secure any and all extensions thereof, however evidenced.

The party of the first part, in order to more fully protect the debt secured by this Deed of Trust, does hereby covenant and agree as follows:

1. That it will pay the Note at the times and in the manner provided therein;
2. That it will not permit or suffer the use of any of the property for any purpose other than the use for which the same was intended at the time this Deed of Trust was executed.
3. That the Regulatory Agreement, if any, executed by the party of the first part and the Secretary of Housing and Urban Development, which is being recorded simultaneously herewith, is incorporated in and made a part of this Deed of Trust. Upon default under the Regulatory Agreement, the party of the third part, at its option, may declare the whole of the indebtedness secured hereby to be due and payable.
4. That all rents, profits and income from the property covered by this Deed of Trust are hereby assigned to the party of the third part for the purpose of

discharging the debt hereby secured. Permission is hereby given to party of the first part so long as no default exists hereunder, to collect such rents, profits and income for use in accordance with the provisions of the Regulatory Agreement;

5. That upon default hereunder party of the third part shall be entitled to the appointment of a receiver by any court having jurisdiction, without notice, to take possession and protect the property described herein and operate same and collect the rents, profits and income therefrom;

6. That at the option of the party of the first part the principal balance secured may be reamortized on terms acceptable to the party of the third part if a partial prepayment results from an award in condemnation in accordance with provisions of Paragraph 8 herein, or from an insurance payment made in accordance with provisions of Paragraph 7 herein, when there is a resulting loss of project income;

7. That the party of the first part will keep the improvements now existing or hereafter erected on the deeded property insured against loss by fire and such other hazards, casualties, and contingencies, as may be stipulated by the party of the third part, and all such insurance shall be evidenced by standard Fire and Extended Coverage Insurance Policy or Policies, in amounts not less than necessary to comply with applicable Coinsurance Clause percentage, but in no event shall the amounts of coverage be less than 80 percent of the Insurable Values or less than the unpaid balance of the Deed of Trust, whichever is the lesser, and in default thereof the party of the third part shall have the right to effect insurance. Such policies shall be endorsed with standard Mortgage clause with loss payable to the party of the third part, as interest may appear, and shall be deposited with the party of the third part.

That if the premises covered hereby, or any part thereof, shall be damaged by fire and other hazard against which insurance is held as hereinabove provided, the amounts paid by any insurance company in pursuance of the contract of insurance to the extent of the indebtedness then remaining unpaid, shall be paid to the party of the third part, and, at its option, may be applied to the debt or released for the repairing or rebuilding of the premises.

8. That all awards of damages in connection with condemnation for public use of or injury to any of said property are hereby assigned and shall be paid to party of the third part, who may apply the same to payment of the installments last due under said note, and party of the third part is hereby authorized, in the name of the party of the first part, to execute and deliver valid acquittances thereof and to appeal from any such award;

9. That together with, and in addition to, the payments of interest or of principal and interest payable under the terms of the note secured hereby the party

of the first part will pay to the party of the third part on each payment date hereof, until the said note is fully paid the following sums:

- a. A sum equal to the ground rents, if any, and the taxes and special assessments next due on the premises covered by this Deed of Trust, plus the premiums that will next become due and payable on policies of fire and other property insurance covering the premises covered hereby, plus water rates, taxes, and assessments next due on the premises covered hereby (all as estimated by the party of the third part) less all sums already paid therefore divided by the number of months to elapse before one (1) month prior to the date when such ground rents, premiums, water rates, taxes and assessments will become delinquent, such sums to be held by the party of the third part to pay said ground rents, premiums, water rates, taxes and special assessments.
- b. All payments mentioned in the preceding subsection of this paragraph and all payments to be made under the note secured hereby shall be added together and the aggregate amount thereof shall be paid each month in a single payment to be applied by the party of the third part to the following items in the order set forth:
 - (I) ground rents, taxes, special assessments, water rates, fire and other property insurance premiums;
 - (II) interest on the note secured hereby
 - (III) amortization of the principal of said note.

10. Any excess funds accumulated under (a) of the preceding paragraph remaining after payment of the items therein mentioned shall be credited to subsequent monthly payments of the same nature required hereunder; but if any item or items shall exceed the estimate therefor the party of the first part shall without demand forthwith make good the deficiency. Failure to do so before the due date of such item shall be a default hereunder. If the property is sold under foreclosure or is otherwise acquired by the party of the third part after default, any remaining balance of the accumulations under (a) of the preceding paragraph shall be credited to the principal of the debt secured hereby as of the date of commencement of foreclosure proceedings or as of the date the property is otherwise acquired.

11. To keep said premises in good repair and not to do, or permit to be done, upon said premises anything that may impair the value thereof or of the security intended to be effected by virtue of this instrument; that it will not make any structure alterations to the building without the written consent of the party of the

third part; to pay to the party of the third part, as hereinafter provided, until said note is fully paid, a sum sufficient to pay all taxes and special assessment that heretofore or hereafter may be lawfully levied, assessed or imposed by a taxing body upon the said land, or upon the party of the first part or party of the third part on account of the ownership thereof to the extent that provision has not been made by the party of the first part for the payment of such taxes and special assessment as herein provided in subparagraph 9 (b);

12. In the case of the refusal or neglect of the party of the first part to make such payments, or to satisfy any prior lien or encumbrances, or to keep said premises in good repair, the party of the third part may pay such taxes, assessments, and insurance premiums, when due, and may make such repairs to the property herein mortgaged as in the party of the third part's discretion are deemed necessary for the proper preservation thereof, and any moneys so paid or extended shall become so much additional indebtedness, secured by this Deed of Trust, to be paid out of the proceeds of the sale of the mortgage premises, if not otherwise paid by the party of the first part, and shall bear interest at the rate specified in the note from the date of advance until paid, and shall be due and payable on demand;

13. It is expressly provided, however (all other provisions of this Deed of Trust to the contrary notwithstanding), that the party of the third part shall neither be required nor have the right to pay, discharge, or remove any tax, assessment, or lien upon or against the premises described herein or any part thereof or the improvements situated thereon, so long as the party of the first part shall, in good faith, contest the same or the validity thereof by appropriate legal proceedings brought in a court of competent jurisdiction, which shall operate to prevent the collection of the tax, assessment or lien so contested and the sale or forfeiture of the said premises or any part thereof to satisfy the same, but in the event of a tax contest, the party of the first part shall deposit with the party of the third part an amount estimated by the party of the first part sufficient to satisfy all taxes, penalties, interest, and costs which may reasonably accrue during such contest;

14. That it will not voluntarily create or permit to be created against the property subject to this Deed of Trust any lien or liens inferior or superior to the lien of the Deed of Trust; and further, that it will keep and maintain the same free from the claim of all persons supplying labor or materials which will enter into the construction of any and all buildings now being erected or to be erected on said premises;

15. That the improvements about to be made upon the premises above described and all plans and specifications comply with all municipal ordinances and regulations made or promulgated by lawful authority, and that the same will upon completion comply with all such municipal ordinances and regulations and with the rules of applicable fire ratings or inspection organization, bureau, association, or office. In the event that party of the first part shall at any time fail to comply with such rules, regulations, and ordinances which are now or may hereafter become applicable to the premises above described, after due notice and demand by the party of the third part, thereupon the principal sum and all arrears of interest and

other changes provided for herein shall at the option of the party of the third part become due and payable.

16. That the funds to be advanced herein are to be used in the construction of certain improvements on the lands herein described, in accordance with a Capital Advance Agreement between the party of the first part and the party of the third part, dated August 23, 2004, which Capital Advance Agreement (except such part or parts thereof as may be inconsistent herewith) is incorporated herein by reference to the same extent and effect as if fully set forth and made a party of this Deed of Trust; and if the construction of the improvements to be made pursuant to said building loan agreement shall not be carried on with reasonable diligence or shall be discontinued at any time for any reason other than strikes or lock-outs, the party of the third part, after due notice to the party of the first part or any subsequent owner, is hereby invested with full and complete authority to enter upon the said premises, employ watchmen to protect such improvements from depredation or injury, and to preserve and protect the personal property therein, and to continue any and all outstanding contracts for the erection and completion of said building or buildings, to make and enter into any contracts and obligations whenever necessary, either in its own name or in the name of the party of the first part, and to pay and discharge all debts, obligations and liabilities incurred thereby. All such sums so advanced by the party of the third part (exclusive of advances of the principal of the indebtedness secured hereby) shall be added to the principal of the indebtedness secured hereby and shall be secured by this Deed of Trust and shall be due and payable on demand with interest at the rate specified in the note. The principal sum and other charges provided for herein shall, at the option of the party of the third part or holder of the note secured hereby and this Deed of Trust securing the same, become due and payable on the failure of the party of the first part to keep and perform any of the covenants, conditions and agreements of said building loan agreement. This covenant shall be terminated upon the completion of the improvements to the satisfaction of the party of the third part and the making of final advance as provided in said building loan agreement;

17. That the party of the third part shall have the right to inspect the mortgage premises at any reasonable time;

18. That so long as the Deed of Trust and Note secured hereby are outstanding, it will not (a) rent dwelling accommodations in the mortgage premises in excess of the rates approved by the party of the third part or for periods of less than one month or in excess of three years (b) rent the premises as an entirety; (c) rent the premises or any part thereof to any person for the purpose of subleasing; (d) rent the premises or permit its use for hotel or transient purposes; (e) require of any tenant as a condition of occupancy like-lease contract fees or other payments over and above those for rents, utilities and collateral services.

19. **NOW, THEREFORE**, if the party of the first part shall well and truly perform all terms and conditions of this Deed of Trust, and of the note secured hereby, then this conveyance shall be null and void, and shall be released or satisfied at the cost and request of the party of the first part. In the event of default in

making any monthly payment provided for herein or in the note secured hereby, and if such default is not made good prior to the due date of the next such installment, or if the party of the first part shall fail to perform any covenant or agreement in this instrument, then all sums owing by the party of the first part to the party of the third part under this Deed of Trust or under the note secured hereby, shall immediately become due and payable, at the option of the party of the third part, and the party of the second part is hereby empowered and authorized, after first advertising for 21 days by 3 weekly notices, giving notice of the time, place and terms of sale, in some newspaper published in the County of Shelby, State of Tennessee, to sell the property at public outcry at such time between the hours of ten (10) in the forenoon and four (4) in the afternoon as shown in said advertisement of sale, to the highest and best bidder for cash, in bar of all equities of redemption, the statutory right of redemption, homestead, dower, and all other rights or exemptions of every kind all of which are hereby expressly waived. The parties in interest hereby waive the necessity of the party of the second part making oath, filing inventory, or giving bond as security for the execution of this trust, as required by the laws of Tennessee. Upon such sale, the party of the second part is hereby authorized to execute and deliver a deed of conveyance in fee of said property to the purchaser thereof, and to place the purchaser in quiet and peaceful possession of the property. The party of the first part agrees that in case of any sale under this Deed of Trust it will at once surrender possession of the property, and will from that moment become and be a tenant at will of the purchaser, and be removable by process, such as forcible and unlawful detainer, hereby agreeing to pay to the purchaser the reasonable rental value of the property after such sale.

20. The proceeds of any sale under this Deed of Trust shall be applied by the party of the second part as follows: First, to pay the costs and expenses of executing this trust and any and all sums expended on account of costs of litigation, attorney's fees, ground rents, taxes, insurance premiums, or any advances made or expenses incurred on account of the property sold, with interest thereon; second, to retain as compensation, a commission of one per centum (1%) on the gross amount of the sale; third, to pay off the debt secured hereby, including accrued interest thereon, as well as any other sums owing to the party of the third part by the party of the first part, pursuant to this instrument; and last, to pay the balance, if any, to the party of the first part upon delivery and surrender to the purchaser or possession of the property sold, less the expense, if any, of obtaining possession;

21. If the party of the third part shall for any reason desire to replace the party of the second part, or any successor trustee hereunder, or if party of the second part should die or be unable or refuse to act, the party of the third part shall have the right to remove the said Trustee and appoint his successor by an instrument in writing, which shall be duly registered in the Register's Office of Shelby County, State of Tennessee; and the new Trustee shall thereupon become successor in title of the said property, and such title shall become vested in him in trust for the purposes and uses of these presents, with all the powers, duties and obligations herein conferred on the party of the second part in the same manner and to the same effect as though he were named herein as trustee;

22. Party of the first part covenants and agrees that so long as this Deed of Trust and the said note secured hereby are held under the provisions of the Housing Act of 1959, it will not execute or file for record any instrument which imposes a restriction upon the sale or occupancy of the mortgaged property on the basis of race, color or creed;

23. The covenants herein contained shall bind, and the benefits and advantages shall inure to, the respective successors and assigns of the parties hereto. The words "Party of the Third Part" as used herein shall be deemed to include any lawful holder of the note secured hereby.

IN WITNESS WHEREOF the party of the first part has caused these presents to be signed in his name by its President the day and year first above written.

C.E. Ware Towers, Incorporated

By: Robert C. Ware
Title: President

STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, the undersigned Notary Public within and for said, County and State, duly commissioned and qualified, personally appeared CE Lunn with whom I am personally acquainted and who, upon oath, acknowledged herself to be the President of C.E. Ware Towers, Incorporated, the within named bargainor, a corporation, and that she as such ~~Vice~~ President, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by herself as such ~~Vice~~ President.

WITNESS my hand and Notarial Seal at office this 28th day of Sept, 2004.

My Commission Expires:

PREPARED BY RETURN TO:
The Lowrance Law Firm, P.C.
5100 Poplar Ave., Suite 2200
Memphis TN 38137

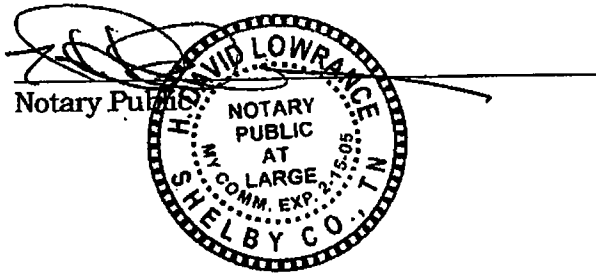


EXHIBIT A

Being the James W. Ford Tract as described in deed recorded as Instrument HX-9213 in the Register's Office of Shelby County, Tennessee, being a part of Lot 1, Section 5, Township 1, Range 8 West in Shelby County, Tennessee, and being more particularly described as follows:

BEGINNING at a point in the west line of South Third Street (U.S. Highway 61) 976.3 Feet North of the Centerline of Fairway Avenue; thence Northwardly along the West Line of South Third Street an Arc to the left having a radius of 11,406.00 feet, a distance of 267.40 feet to a point; thence north 70 degrees 58 minutes 16 seconds west a distance of 89.98 feet to a point; thence north 87 degrees 18 minutes 10 seconds west a distance of 531.19 feet to a point; thence south 1 degree 37 minutes 33 seconds west a distance of 280.14 feet to a point; thence south 87 degrees 18 minutes 47 seconds east a distance of 530.88 feet to the point of beginning.

The area of the above-described property is 160,882 square feet or 3.693 acres.

Board of Directors of Ware Towers, Inc.

| | | | | | | | |
|------|---------|----------|-----------|----------------------|---------|----|-------|
| Mrs. | Marilyn | Halfacre | President | 1772 Kingsview Dr. | Memphis | TN | 38114 |
| Mrs. | Bertha | Garner | | 7240 Germanshire Ln. | Memphis | TN | 38125 |
| Mrs. | Alice | Harris | Secretary | 2167 Rayner St. | Memphis | TN | 38106 |
| Mrs. | Audrey | Larsha | | 1010 Hawthorne St. | Memphis | TN | 38107 |
| Mrs. | Mary | Daniels | | 2429 Perry Rd. | Memphis | TN | 38106 |
| Ms. | Cheryl | Martin | | 3070 Greenbranch Dr. | Memphis | TN | 38118 |